**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| **In the Matter of** | ) | |
| | ) | |
| **Connect America Fund** | ) | **WC Docket No. 10-90** |
| | ) | |
| **A National Broadband Plan for Our Future** | ) | **GN Docket No. 09-51** |
| | ) | |
| **Establishing Just and Reasonable Rates for Local Exchange Carriers** | ) | **WC Docket No. 07-135** |
| | ) | |
| | ) | |
| **High-Cost Universal Service Support** | ) | **WC Docket No. 05-337** |
| | ) | |
| **Developing an Unified Intercarrier Compensation Regime** | ) | **CC Docket No. 01-92** |
| | ) | |
| | ) | |
| **Federal-State Joint Board on Universal Service** | ) | **CC Docket No. 96-45** |
| | ) | |
| | ) | **WC Docket No. 03-109** |
| **Lifeline and Link-Up** | ) | |
| | ) | **WT Docket No. 10-208** |
| **Universal Service Reform – Mobility Fund** | | |

**PETITION FOR RECONSIDERATION**

Pursuant to § 1.429(d) of the Federal Communications Commission's ("FCC") rules, the Public Service Commission of the District of Columbia ("DC PSC") respectfully submits this petition for reconsideration of the new 47 C.F.R. § 51.915(e)(3), included in the November 18, 2011 Report and Order and Further Notice of Proposed Rulemaking in the *Connect America Fund; A National Broadband Plan for our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Board on Universal Service; Lifeline and Link*

*Up; Universal Service Reform – Mobility Fund* ("USF/ICC Order").[1] The DC PSC respectfully requests the FCC to reconsider the determination to permit price cap local exchange carriers ("price cap LECs") to determine the allocation of eligible recovery for intercarrier compensation reform at the holding company level. Alternatively, the DC PSC seeks a waiver from this rule, so that consumers in jurisdictions that have no intrastate access charges are not required to pay for intrastate access charges lost by the price cap LEC in other jurisdictions.

**RULE 51.915(e)(3) UNFAIRLY PERMITS HOLDING COMPANIES TO PASS ON INTRASTATE ACCESS CHARGE RECOVERY TO JURISDICTIONS THAT HAVE NO INTRASTATE ACCESS**

The USF/ICC Order creates a new charge, the Access Recovery Charge ("ARC"), which is designed, in part, to recoup intrastate and interstate access revenues that are lost as a result of the reforms in the Order.[2] The ARC may be assessed as a monthly charge on primary residential and single-line business end users for five years and may increase $0.50 per year.[3] For multi-line business customers, the monthly ARC may increase $1.00 per year, subject to some limitations.[4] The ARC is also capped for residential customers to the extent that the imposition of the ARC would result in a monthly bill of more than $30.00.[5]

In determining the assessment of the ARC, the new Rule 51.915(e)(3) states:

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[1] *Connect America Fund; A National Broadband Plan for our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund,* WC Dockets No. 10-90, 07-135, 05-337, 03-109, CC Dockets No. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking ("USF/ICC Order"), rel. November 18, 2011. The Order and Further Notice of Proposed Rulemaking was published in the Federal Register on November 29, 2011 at 76 *Fed. Reg.* 73830-73883.

[2] *See e.g.*, Rule 51.915(d).

[3] Rule 51.915(e)(5)(i).

[4] Rule 51.915(e)(5)(ii).

[5] Rule 51.915(e)(5)(iii).

> For the purposes of this section, a Price Cap Carrier holding company includes all of its wholly-owned operating companies that are price cap incumbent local exchange carriers. A Price Cap Carrier Holding Company may recover the eligible recovery attributable to any price cap plan study areas operated by its wholly-owned operating companies through assessments of the Access Recovery Charge on end users in any price cap plan study areas operated by its wholly owned operating companies that are price cap plan incumbent local exchange carriers.[6]

Paragraph 910 of the USF/ICC Order provides further clarity to this rule, stating that the ARC for each incumbent LEC can be calculated at the holding company level. This means that costs for the ARC can be spread out among jurisdictions so that customers in areas that have lower residential rates may be assessed an ARC to recover costs that are lost in more costly areas. The FCC rationalizes this decision by stating that price cap incumbent LECs will be able to recoup their lost costs from a broader range of customers while minimizing any reliance of the Connect America Fund ("CAF") to recover these costs.[7]

As the DC PSC has indicated in several filings, there are no intrastate access charges to reform in the District of Columbia. Thus, whatever intrastate access revenues are "recovered" from District of Columbia customers under Rule 51.915 (c)(3) would actually be intrastate access revenues "lost" in another jurisdiction. It is patently unfair for District of Columbia consumers to be required to make up the loss of revenues, when the District of Columbia's price cap incumbent LEC would not have lost any intrastate access revenue from the District of Columbia. This transfer of intrastate access revenue would essentially constitute an unjust reallocation of costs among jurisdictions.

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[6] Rule 51.915(e)(3).

[7] USF-ICC Order at 326, ¶ 910.

## THE FCC CITED NO LEGAL AUTHORITY TO JUSTIFY PERMITTING HOLDING COMPANIES TO REALLOCATE INTRASTATE ACCESS REVENUES FROM ONE JURISDICTION TO OTHER JURISDICTIONS

Throughout the USF/ICC Order, the FCC discusses its legal authority to undertake the universal service and intercarrier compensation reforms included in the Order.[8] However, in making its determination that holding companies may recover lost intrastate access revenue in one jurisdiction from other jurisdictions, the FCC cites no legal authority. In particular, the FCC does not provide any legal justification to permit recovery of other jurisdictions' lost intrastate revenue from a jurisdiction that has no lost intrastate revenue. The FCC does not explain how section 2(b) of the Communications Act is not implicated by this recovery of lost intrastate revenues. The FCC cannot simply assume that it has the legal authority to permit such recovery of lost intrastate revenues.

## THE FCC'S DECISION TO PERMIT HOLDING COMPANIES FLEXIBILITY IN ASSESSING ARCS THROUGHOUT THEIR TERRITORIES REGARDLESS OF THE ACTUAL REVENUE LOST IN EACH PARTICULAR JURISDICTION IS UNSUPPORTED BY EVIDENCE IN THE RECORD.

The concept of calculating lost access revenue at the holding company level and spreading the recovery throughout all holding company lines originated in the ABC Plan.[9] However, the FCC modified this proposal, granting holding companies more flexibility in determining whether to assess the ARC and how to calculate the ARC. This flexibility provides greater opportunities for price cap incumbent LECs to recover lost intrastate access revenue from jurisdictions that have no such revenue. In its August 2011 Public Notice, the FCC sought

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8 *See, e.g.*, USF/ICC Order at 250-261, ¶ 760-781.

9 Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) ("ABC Plan"), Attachment 1 at 12.

comments on the ABC Plan proposal, but did not seek comments on whether price cap incumbent LECs should be given flexibility to implement this proposal. Thus, the FCC's decision to substantially expand the ABC Plan proposal and permit price cap incumbent LECs great flexibility in implementing this proposal was not based on any input from parties in this proceeding. As such, this decision is arbitrary and capricious and must be reconsidered.

**THE FCC ERRONEOUSLY CONCLUDED THAT COMPETITIVE PRESSURE WOULD LIMIT ARC LEVELS**

Throughout the USF/ICC Order, the FCC states its belief that competitive pressures will limit the ARC increase, so that the monthly charge cap will not be reached in any year.[10] While competitive pressures may limit ARC increases in other areas of the country, there is very little competitive pressure in residential and small business rates in the District of Columbia. In its last price cap plan proceeding, the DC PSC found that business message rate (individual line and additional line) service and business message unit service should not be deemed competitive services, because this classification would not protect small businesses.[11] There was no dispute in that proceeding concerning the continued classification of residential services in the basic services basket due to the lack of residential competition. The FCC's determination that there is sufficient competition to prevent $0.50 annual ARC increases contradicts the DC PSC's finding that the District of Columbia basic residential and business markets are not yet competitive.

The District of Columbia residential market remains uncompetitive. In reviewing current rates for basic residential service in the District of Columbia, the DC PSC notes that there are

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[10] USF/ICC Order at 15, n. 19; 296-297, ¶ 852; 297, n. 1647; Appendix I, 638, n. 26.

[11] *Formal Case No. 1507, In the Matter of Verizon Washington, DC Inc.'s Price Cap Plan 2007 for the Provision of Local Telecommunications Services in the District of Columbia*, Order No. 15056 at 10-11, ¶ 27, rel. September 8, 2008.

only four providers of residential flat rate service. Of these providers, only one offers rates lower than the price cap incumbent LEC. This alternative provider is not a major player in the local residential market.[12] Thus, there is no true competition for basic flat rate residential service.

The price cap incumbent LEC's monthly residential flat rate is $13.78, which is much lower than bundles offered by the two major competitors in the District of Columbia. Due to the lack of competition for basic residential service, the price cap incumbent LEC could easily increase its ARC $0.50 each year without fear of hitting the USF/ICC Order's cap on residential rates or fear of losing these customers.[13] Thus, contrary to the FCC's findings, there are no competitive pressures in the District of Columbia limiting the price cap incumbent LEC's ability to impose the full ARC for each of the five years.

## THE FCC SHOULD AMEND RULE 51.915(e)(3) OR WAIVE ITS APPLICATION TO JURISDICTIONS THAT HAVE NO INTRASTATE ACCESS

To eliminate the inequity created by Rule 51.915(e)(3), the DC PSC recommends three options. First, the FCC could replace Rule 51.915(e)(3) with a provision that would require calculation of Eligible Recovery be performed by price cap LECs at the study area level. This change would make the calculation methodology for the ARC more consistent with the calculation methodology for the subscriber line charge ("SLC"). Secondly, the FCC could amend Rule 51.915(e)(3) to prohibit price cap holding companies from permitting recovery of the lost intrastate access revenue from jurisdictions in which there is no lost intrastate access revenue. Alternatively, the FCC could waive the application of Rule 51.915(e)(3) to jurisdictions that have no lost intrastate access revenue. These amendments or waiver would

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12 See Attachment A.

13 The price cap incumbent LEC can also use the ARC as a means of circumventing the DC PSC approved cap on residential rates, which is the lesser of $1.00 or ten percent.

prevent consumers in jurisdictions that have not lost intrastate access revenue from being unfairly assessed for this revenue through the ARC.

The DC PSC appreciates the opportunity to file this Petition for Reconsideration. We ask the FCC to consider the inequities we have pointed out herein.

Respectfully submitted,

**PUBLIC SERVICE COMMISSION**
**of the DISTRICT OF COLUMBIA**

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December 29, 2011

## Telecommunication Prices in the District as of December 31, 2011

*(Based on Tariffs, Website, and Annual Survey Information)*

| Company | Monthly Price – Flat Rate Service |
|---|---|
| Broadview Networks, Inc. | $16.78, unlimited calling |
| Cavalier Telephone Mid-Atlantic, LLC | $19.95, unlimited calling |
| Metropolitan Telecommunications of DC d/b/a MetTEL | 12.78, unlimited local calling |
| Verizon | $13.78, unlimited local calling |

| Company | Monthly Price – Flat Rate Service Combined with Calling Features (e.g. Caller ID, Call Waiting, 3-Way Calling, etc) |
|---|---|
| Comcast | $34.95 Local With More - 12 popular calling features including Caller ID, Call Waiting, Unlimited local calling, In-state and out-of-state nationwide long-distance for just 5 cents a minute |
| Matrix Telecom Inc. d/b/a Trinsic | $25.95 for primary line and also for a secondary line. Includes unlimited local calling, Personal Voice Assistant (PVA), and Member-to-Member Calling. Contains, a features package - voice mail is available at extra charges. |
| Starpower d/b/a RCN | $20 unlimited Local Calling Plan – $20.00 for first line and $10 for each additional line. Includes 3-way calling (Currently available only for facilities-based customers.) |
| MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services. | $30.99, unlimited local calling and a choice of 3 calling features. |
| Verizon | $34.99, unlimited local calling and a choice of 3 calling features. |

| Company | Monthly Price – Flat Rate Service Combined with Long Distance |
|---|---|
| ACN Communication Services, Inc. | $13.99 per month (First Year), and $22.99 (After First Year). Unlimited local calling. Long distance calling is $2.99 per month when regional calls are 5 cents per minute and interstate calls are 49 cents per minute and provided at $1.99 per month when regional calls and interstate calls are 10 cents per minute. Includes 10 features at no extra cost. |
| Comcast | $44.95 Comcast Unlimited - 12 popular calling features including Caller ID, Call Waiting, Unlimited local and long-distance calling to the US, Canada and Puerto Rico, Visual voice mail that lets you see who called so you can listen to the most important messages first. |
| DSCI Corporation | $29.99 per month – unlimited local and regional calling plus one hour of long distance dialing. Additional long distance calls 4.9 cents state-to-state and 7.9 cents instate toll. 12-item feature package is included. |
| Gateway Communications | Calling Plan A- $24.99 unlimited local calls, 100 minutes per month of long distance/toll service, $0.05 per minute for long distance calls after service allowance. The free calling features. |
| Matrix Telecom inc. d/b/a Trinsic | $46.49 & 7 cents a minute for calls above the cap; second line - $27.50. Includes unlimited local calling and 1000 minutes of free long distance calling. Includes Caller ID, and Member-to-Member Calling. |
| Nationsline District of Columbia | $29.99 per month – unlimited local and regional calling plus one hour of long distance dialing. Additional long distance calls 4.9 cents state-to-state and 7.9 cents instate toll. 12-item feature package is included. |
| Starpower d/b/a RCN | $50 per month. Unlimited local, regional, and long distance service. Includes choice of four features from the following: Caller ID Deluxe, Call Waiting, Call Waiting ID Deluxe, Basic Voicemail, Call Return, 3-way Calling, Repeat Call, Speed Dial 8, and Call Forward Variable. With 1-year contract - $39.95 per month. |
| Verizon | $58.99, unlimited local and long distance - includes Home Voice Mailbox, Caller ID, Call Waiting, Speed Dialing and 3 way Calling. |

| Company | Monthly Price – Other Packages (Voice, Internet, TV) |
|---|---|
| Cavalier Telephone Mid-Atlantic, LLC | $34.95, unlimited Local Calling, 12 free calling features and unlimited 56K Dial-Up access |
| Comcast Phone of DC | $99.00 Xfinity Triple Play |
| Verizon | $79.99 FiOS Triple Play |
| Vonage | $24.99 with any provider of high speed Internet service. Unlimited local and long distance calling. |